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Craig A. Anderson
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Ameritech

October 29, 1996

Ms. Dorothy Wideman
Executive Secretary
Michigan Public Service Commission
P.O. Box 30221
Lansing, MI 48909

Re: MPSC Case No. U-11104.

Dear Ms. Wideman:

Enclosed for filing in the above-referenced case is an original and fifteen copies of Ameritech Michigan's Response to MCTA's Motion to Reject Application for Approval of Generally Available Terms and Conditions.

Very truly yours,

Craig A Anderson

Enclosure

cc: All Parties of Record

CAA:jkt

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission's own motion, to consider Ameritech Michigan's compliance with the competitive checklist in Section 271 of the Telecommunications Act of 1996.	)))))	Case No. U-11104

AMERITECH MICHIGAN'S RESPONSE TO MCTA's MOTION TO REJECT APPLICATION FOR APPROVAL OF GENERALLY AVAILABLE TERMS AND CONDITIONS

Ameritech Michigan[1] hereby responds as follows to the motion filed by the Michigan Cable Telecommunications Association (MCTA) on October 11, 1996 to reject Ameritech Michigan's application for approval of generally available terms and conditions (General Statement). MCTA filed no notice of hearing with its motion, so no due date for responses to the motion has been established under the Commission's Rules of Practice and Procedure (Rule 335). In addition, MCTA has provided no procedural basis for its motion to summarily reject the General Statement.

Ameritech Michigan filed its application for approval of the General Statement on September 30, 1996. Based on the Commission's August 25, 1996 order, reply comments from interested parties would have been due within 14 business days (i.e., October 18, 1996). In order to provide certain confidential information filed in this docket to other parties, Ameritech Michigan sent a letter to the Commission's Executive Secretary, with a copy to all counsel, on October 17, 1996 requesting the entry of a protective order and, in the interim, offering to

[1]Michigan Bell Telephone Company, a Michigan corporation, is a wholly owned subsidiary of Ameritech Corporation, which owns the former Bell operating companies in the states of Michigan, Illinois, Wisconsin, Indiana, and Ohio. Michigan Bell offers telecommunications services and operates under the names "Ameritech" and "Ameritech Michigan" (used interchangeably herein), pursuant to assumed name filings with the state of Michigan.

provide copies of the confidential information pursuant to an interim protective agreement. In that letter, Ameritech Michigan indicated it would not object to comments filed 14 business days from the time the information was made available.

MCTA has expressed concern that Ameritech Michigan did not file a notice of intent to file information 5 business days before submitting its application for approval of the General Statement. However, in the Commission's August 25, 1996 order, a notice of intent to file information is specifically required only for the filing of information concerning Ameritech Michigan's compliance with the competitive checklist. The application for approval of the General Statement was not submitted to this Commission in this docket as a demonstration of Ameritech Michigan's compliance with the competitive checklist, but rather, was submitted pursuant to Paragraphs 5 and 6 of that order, which permits parties to file other information in this docket at any time. While Ameritech Michigan believes that the General Statement is appropriately part of the complete record which should be before this Commission in its consideration of general market conditions and checklist compliance, the application for approval of the General Statement is actually a separate process from the checklist compliance mandated by Section 271 of the federal Act. The filing of Ameritech Michigan's application for approval of the General Statement was made in this docket after consultation with the Commission Staff concerning the appropriate procedure, as was specifically directed by the Commission's August 25, 1996 order. (Page 4)

Therefore, Ameritech Michigan believes it is clear that there was no requirement for a notice of intent 5 days before filing.

In addition, MCTA raises concerns regarding the conclusion of protective arrangements for information supporting the filing. Ameritech Michigan believes that the language requiring that protective arrangements be concluded prior to filing relates to the protective arrangements that are required to be

concluded with the Commission's Executive Secretary; i.e., the submission of the documents under confidential cover. However, this issue, as raised by MCTA, is moot since Ameritech Michigan has, as previously described, made the confidential information available to all parties.[2] (See attached letter to Dorothy Wideman dated October 17, 1996.) In addition, as described in that letter, Ameritech Michigan has indicated that it would have no objection to parties commenting on Ameritech Michigan's application for approval of its General Statement within 14 days from the date the confidential information was made available. Therefore, no party would be prejudiced by any delay in obtaining confidential information which has since been withdrawn.

Clearly, the Commission's order contemplates a submission by parties in this docket of other information related to the matters at issue in this docket. This would include the review and approval of the General Statement. As suggested by the Commission in its August 28, 1996 order (p. 4), Ameritech Michigan consulted with the Commission Staff prior to filing its application for approval of the General Statement. Based on that consultation, Ameritech Michigan has filed its application in connection with this docket. It would be manifestly unfair and unreasonable to simply reject Ameritech Michigan's filing in this docket based upon a decision that it should have been filed in a separate docket, and thereby subjecting Ameritech Michigan to starting all over on the process for approval of the General Statement. Ameritech Michigan would have no objection of transfer of the issues relating to the application for the approval of the General Statement to a separate docket if the Commission so desires; provided, however, that the timeline for the Commission's review and approval should remain

[2]The confidential information was provided to MCTA based on receipt of an agreement to interim protective arrangements on October 22, 1996.

consistent with that established by Ameritech Michigan's original submission and subsequent willingness to extend to December 9, 1996.[3]

For the foregoing reasons, Ameritech Michigan requests that MCTA's motion for summary rejection of the General Statement be dismissed.

Respectfully submitted,

AMERITECH MICHIGAN

Craig A. Anderson

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DATED: October 29, 1996

[3]See the October 18, 1996 letter from Paul La Schiazza, Vice President - Regulatory, Ameritech Michigan, to William Celio, Director of Communication Division, Commission Staff, regarding the above-captioned docket.

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46

Ameritech

October 30, 1996

Ms. Dorothy Wideman
Executive Secretary
Michigan Public Service Commission
P.O. Box 30221
Lansing, MI 48909

Re: MPSC Case No. U-11104.

Dear Ms. Wideman:

Enclosed for filing in the above-referenced case is an original and fifteen copies of the Response of Ameritech Michigan to Motion for Summary Disposition Regarding its General Statement.

Very truly yours,

Craig A Anderson

Enclosure

cc: All Parties of Record

CAA:jkt

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission's own motion, to consider Ameritech Michigan's compliance with the competitive checklist in Section 271 of the Telecommunications Act of 1996	))))))	**Case No. U-11104**

RESPONSE OF AMERITECH MICHIGAN TO MOTION FOR SUMMARY DISPOSITION REGARDING ITS GENERAL STATEMENT

Various parties, spearheaded by Ameritech Michigan's principal potential competitors for long distance business -- AT&T Communications of Michigan, Inc. ("AT&T"), MCI Telecommunications Corporation ("MCI"), Sprint Communications Company L.P. ("Sprint") and Competitive Telecommunications Association ("CompTel") (collectively, "the Movants") -- have filed a motion for summary disposition and dismissal of Ameritech Michigan's application for approval of its General Statement of terms available to competing providers of telephone exchange service filed pursuant to Section 252(f) of the Telecommunications Act of 1996 ("the Act").[1] In addition, the Staff of the Michigan Public Service Commission has recommended that Ameritech Michigan's General Statement be rejected. Comments regarding the General Statement were also filed by the Telecommunications Resellers Association (TRA) and the Michigan Cable Telecommunications Association (MCTA).

Movants filed no notice of hearing with their motion, so no due date for responses to the motion has been established under Rule 335 of the Commission's

[1]Unless otherwise referenced to applicable sections of the Michigan Telecommunications Act (MTA)), all "Section" citations are to the 1996 Act, Public Law 104-104 (Feb. 8, 1996), which is codified in Title 47 of the United States Code.

Rules of Practice and Procedure. Nevertheless, Ameritech Michigan submits the following response to the motion.

Virtually all of the objections raised concerning Ameritech Michigan's General Statement would be obviated, or at least largely ameliorated, by a simple procedure: The Commission should permit Ameritech Michigan's General Statement to become effective pursuant to Section 252(f)(3)(B) of the 1996 Act, subject to continued review. It could then, if necessary, direct revisions of the General Statement pursuant to the express authority granted in Section 252(f)(4) of the 1996 Act, in the event that the pending arbitrations produced results that were not consistent with the General Statement.[2] This is the approach that Ameritech Michigan recently suggested to the Commission Staff.[3]

The approach proposed by Ameritech Michigan would decrease the current pressure on both the Commission and the parties, and permit them to concentrate on the arbitration proceedings, which overlap the issues raised regarding the General Statement. It would also provide a mechanism to resolve any discrepancies that might arise between the results of the arbitration procedure and the General Statement. Indeed, Ameritech Michigan commits that, if and to the extent necessary, it will conform its General Statement to the final arbitration results. Moreover, permitting the General Statement to take effect has the benefit of providing a detailed description of Ameritech Michigan's "general offering" to smaller carriers that have recently requested Section 251 negotiations.

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[2]This is the approach suggested by the Staff of the Illinois Commerce Commission with regard to comparable proceedings and issues raised before that Commission. See Initial Comments of the Staff of the Illinois Commerce Commission, Petition of Ameritech Illinois for Approval of a Statement of Generally Available Terms Pursuant to the Telecommunications Act of 1996, Docket No. 96-0491, p. 5 (Ill. Commerce Comm'n) (filed Oct. 21, 1996).

[3]See Letter dated October 18, 1996, from Ameritech Michigan to William Celio, Director of the Communications Division, Michigan Public Service Commission Staff, a copy of which is attached to this Response.

Because summary dismissal is a wholly inappropriate remedy, the Motion should be denied.

I. AMERITECH MICHIGAN'S GENERAL STATEMENT IS CONSISTENT WITH THE PURPOSE OF SECTION 252(f)

Much of the Movants' discussion is designed to complicate or confuse the purposes of a Section 252(f) General Statement. Section 252(f)(1) of the Act, however, plainly permits Ameritech Michigan to file, at any time, a statement that describes

> "the terms and conditions that such company generally offers within the State to comply with the requirements of section 251 and the regulations thereunder and the standards applicable under this section."

Section 252(f)(2) provides for State commission review of General Statements; Section 252(f)(3) provides a 60-day period for State commission review; and Section 252(f)(4) permits a State commission to continue its review after the 60-day period has expired.

Significantly, Section 252(f)(5) provides that the:

> "submission or approval of a statement under this subsection shall not relieve a Bell operating company of its duty to negotiate the terms and conditions of an agreement under section 251."

Thus, the Act obviously contemplates that the filing of a General Statement is an independent, stand-alone procedure: A General Statement may be filed by a BOC at any time.

As demonstrated in this Response, a General Statement can serve a number of purposes. First, a General Statement may be useful to a requesting carrier that seeks to negotiate an interconnection agreement with Ameritech Michigan. Second, the General Statement describes Ameritech Michigan's compliance with Sections 251 and 252 of the Act. Likewise, as demonstrated

below, Ameritech Michigan may use a General Statement to show "competitive checklist" compliance, pursuant to Section 271(c)(2)(B), if it applies to provide interLATA service pursuant to Section 271(c)(1)(A). Finally, a General Statement is a necessary requirement if Ameritech Michigan seeks interLATA authority pursuant to Section 271(c)(1)(B). Therefore, Ameritech Michigan's General Statement may serve a number of useful purposes and should not be summarily rejected.

Under Section 252(f) of the Act, Congress unequivocally conferred authority on a Bell operating company to file General Statements regardless of whether the BOC had received requests for interconnection, had negotiated interconnection agreements, or was engaged in arbitrations regarding the terms of interconnection and regardless of whether a BOC files an application with the FCC to provide interLATA service under either Section 271(c)(1)(A) or Section 271(c)(1)(B). Given Congress's clear directive, the Movants' views concerning the scope and purpose of Ameritech Michigan's General Statement filing at this time are simply wrong.

II. AMERITECH MICHIGAN'S GENERAL STATEMENT SHOULD BE PERMITTED TO BECOME EFFECTIVE IN ACCORDANCE WITH SECTION 252(f)(3)(B) OF THE 1996 ACT, SUBJECT TO POSSIBLE FURTHER REVIEW BY THE COMMISSION UPON THE COMPLETION OF THE PENDING ARBITRATIONS

Ameritech Michigan suggests the following procedure for the review of its General Statement: The Commission should permit the General Statement to become effective in accordance with the terms of Section 252(f)(3)(B) of the 1996 Act. Then, after the completion of the pending arbitration proceedings, the Commission could continue its review of the General Statement, as it is permitted

to do under Section 252(f)(4) of the 1996 Act, in the event that the arbitration results produced an inconsistency with the General Statement.[4]

Meanwhile, any carrier that had neither the appetite for litigation, nor the Movants' motivation for delay, may use the General Statement as the starting point for negotiations with Ameritech Michigan. Any resulting agreement would, of course, be subject to Commission approval pursuant to Section 252(e).

The procedure suggested by Ameritech Michigan would have a number of advantages. In particular, it would eliminate or greatly reduce any duplication of effort between the arbitration proceedings and this case, reducing the burden upon the Commission, the Staff and the various parties. This procedure would also provide a specific mechanism for the reconciliation of any discrepancies between the arbitration results and Ameritech Michigan's General Statement. This also accommodates Staff's concerns about avoiding duplicative efforts to the extent substantive issues raised by the General Statement are also at issue in pending arbitrations or other proceedings. (See Staff Comments, pp. 6-7)

This also accommodates MCTA's concerns regarding pole attachments. If and when a MCTA member, acting as a telecommunications carrier, enters into negotiations, or subsequently arbitration, concerning services offered by Ameritech Michigan, the outcome of that process will be subject to the approval of the Commission and, if necessary, the General Statement can be reconciled to the result.

In this connection, Ameritech Michigan recognizes that, at the end of the day, there cannot be a fundamental discrepancy between the arbitration results and its General Statement. For this reason, Ameritech Michigan's General Statement is based on the interconnection agreements that it has proposed in each

[4]This was the process recommended by Ameritech Michigan at Page 2 of the October 18, 1996 letter to Staff.

of its pending arbitrations, and Ameritech Michigan filed its General Statement so that the 60-day period would not run until after the first arbitration award is due. If a discrepancy should occur as a result of the arbitrations, the Commission should direct Ameritech Michigan to conform its General Statement to those results.[5]

Movants devote a substantial portion of their Motion to a detailed exposition that purportedly shows that, in various respects, Ameritech Michigan's General Statement is not consistent with Sections 251 and 252 of the 1996 Act and with various provisions of Michigan law. See Motion, pp. 6-17. Yet it is apparently not disputed that all or virtually all of the issues identified by Movants are raised or implicated in the pending arbitration proceedings and presumably will be resolved therein.[6] Therefore, it is unnecessary and duplicative of effort for Ameritech Michigan now to respond to, and for the Commission to make a decision concerning, these issues that will be dealt with in the arbitration context.

In any event, Movants have utterly failed to demonstrate, at this point in the proceeding, that the General Statement should be summarily dismissed or rejected, without further investigation. The pleading filed by the Movants, standing alone, does not provide a basis for dismissing the General Statement.[7]

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[5]For example, TRA recognizes Ameritech Michigan's right to modify the General Statement as long as such modifications are consistent with applicable law. (TRA Comments, p. 4) Ameritech Michigan, of course, agrees with this position.

[6]Movants state that the "Commission will soon be completing its arbitrations and reviews of actual interconnection agreements that will cover all of the issues purportedly addressed in the Statement." Motion, p. 2. Staff has noted that "a number of arbitrations are currently pending before the Commission in which an arbitration panel will determine, based on the same standards which are to be used in this instance, the cost based prices for many of the items listed in Ameritech's statement of generally available terms and conditions. Any questions regarding whether the pricing standards have been met will be addressed soon in the arbitration proceedings." MPSC Staff Response to Ameritech Application for Approval of Its Statement of Generally Available Terms, dated Oct. 21, 1996, p. 6 ("MPSC Staff Response").

[7]Although Movants characterize their request as a motion for summary disposition, it clearly fails the test applied to such requests; i.e., that there is no genuine issue of material fact, or that there is a failure to state a claim upon which relief can be granted, and therefore, the Movants are entitled to judgment as a matter of law. See, Rule 323, Commission's Rules of Practice and Procedure. See also, Michigan Court Rules 2.116. For example, Movants claims that the resale

The Movants' pleading is full of conclusory allegations concerning what the Movants contend they will show concerning the General Statement, the underlying facts and applicable law. These factual and legal allegations would have to be addressed before they could form the basis for dismissing the General Statement. Standing alone, they do not serve as a basis for Commission decision.

The approach suggested by Ameritech Michigan wholly undermines Movants' contention (Motion, p. 2), that the General Statement creates "confusion," a "further burden," and "distract[s]" from resolution of the pending arbitrations. Rather, the arbitration proceedings will continue without hindrance or distraction, and their results will be used, if and to the extent necessary, to conform the General Statement to the conclusions ultimately derived from the arbitration proceedings.

III. AMERITECH MICHIGAN'S GENERAL STATEMENT IS CONSISTENT WITH THE PERTINENT PROVISIONS OF THE 1996 ACT

Movants contend that Ameritech Michigan's General Statement is defective because "a number of its key components are not yet offered by Ameritech generally throughout the state." Motion, p. 3. Movants' analysis is mistaken.

A General Statement is a listing of terms, consistent with Sections 251 and 252 of the 1996 Act, that are available upon request to competing providers of telephone exchange service. A General Statement is not a tariff, but rather a device to facilitate negotiations with competing providers by describing the terms and conditions generally offered by the BOC to comply with its duties under the

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discount levels "are far below any reasonable standard" (Motion, p. 7), that costs are not sufficiently forward-looking (Motion, p. 8), and that fees for resale fail to meet priority standards (Motion, p. 11) are clearly not issues which can be decided as a matter of law without consideration of the facts.

1996 Act. Indeed, all of the concerns raised by TRA in its comments would be the appropriate subject of good faith negotiation, using the General Statement as the starting point. The General Statement is, in other words, a commitment by Ameritech Michigan to provide the required service if and when requested by a competing provider. This definition is entirely consistent with the contract meaning of an "offering," which is a "commitment to do or refrain from doing some specified thing in the future." Black's Law Dictionary, p. 1081 (6th ed. 1990). See Restatement (Second) of the Law of Contracts, § 24. Or, as the Illinois Commerce Commission told the FCC, the General Statement "could be viewed as a baseline against which to craft arbitrated arrangements."[8] In this sense, therefore, contrary to Movants' assertion (Motion, p. 21), the General Statement has a "legitimate purpose" that is entirely independent of its possible use in a Section 271 application to the FCC.

Virtually all of services or procedures described in Ameritech Michigan's General Statement squarely satisfy this criterion -- that is, they will be provided to competing carriers if and when they are requested. An arguable exception is the electronic interfaces or operational support systems that will be available to competing carriers by January 1, 1997. (Indeed, this is the only example that Movants cite of an aspect of the General Statement that is not available to competing providers. See Motion, p. 4.) The January 1, 1997 date is entirely consistent with the FCC's regulations, however, which do not require immediate implementation, but rather give the BOCs until the first of next year to provide this particular network element. See First Report and Order, ¶ 525; 47 C.F.R. § 51.319(f)(2).

[8]In the Matter of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, ¶ 131 (Aug. 8, 1996), quoting Illinois Commerce Commission Comments, p. 14.

Similarly, Staff's comments contend that Ameritech Michigan has no authority to sell any of the services included in the General Statement. (Staff Comments, p. 3) However, this is a fundamental mischaracterization of the regulatory requirements applicable to the services in the General Statement. Under both Michigan law and the 1996 Act, Ameritech Michigan may offer the services included in the General Statement pursuant to contract and is not limited only to a tariff offering.

Indeed, the concept of agreements between carriers for the provision of services related to local competition, arrived at either through negotiation or arbitration, is a fundamental premise of the 1996 Act. Similarly, the Michigan Telecommunications Act, as interpreted by this Commission, recognizes and permits the use of agreements between providers for the provision of services related to local competition.

In the City Signal interconnection case, Case No. U-10647, the Commission recognized that services made available to competing providers in connection with providing local exchange service are generally categorized as access services under the MTA and may be made available pursuant to a contract between the providers.[9] (MPSC Case No. U-10647, Opinion and Order, February 23, 1995, p. 84)

The 1995 amendments to the Michigan Telecommunications Act (MTA) did not eliminate the use of contracts between providers as an alternative to tariff offerings. Section 352(1) of the MTA, added in the 1995 amendments, requires that rates for interconnection services[10] must be set at total service long run

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[9]Section 202(c) of the Michigan Telecommunications Act, along with Section 310, addressing access services, recognizes that such services may be made available by a provider pursuant to contract as an alternative to tariff.

[10]Not all of the services included in the General Statement are "interconnection services" as defined in the MTA. Interconnection services are narrowly defined in Section 102(k) of the MTA to include only those services which are necessary to allow telecommunication service originating on one provider's network to terminate on another provider's network. See also FCC's First Report and Order, Paragraphs 176 and 258, recognizing that interconnection, as used in the federal Act, refers only to the physical linking of two providers' networks for the mutual exchange

incremental cost (TSLRIC) until January 1, 1997, and thereafter at just and reasonable rates as determined by the Commission.

Under Section 252(e) of the 1996 Act, Ameritech Michigan is obligated to obtain Commission approval after entering into an agreement with a competing provider for interconnection, unbundled network elements, or other services described in Section 251. Under Section 252(e)(3), that approval may include application of state law requirements to the contract (as was the case in the Commission's review of the MFS agreement, Case No. U-11098). This requirement of prior approval of such contracts is consistent with the MTA's requirement that rates for interconnection be just and reasonable as determined by the Commission.

Therefore, Ameritech Michigan is not precluded from offering the services described in the General Statement unless and until prior approval is obtained for tariffs for all of the services included in the General Statement. Clearly, Ameritech Michigan may offer the services included in the General Statement to other providers, may negotiate and reach agreement or possibly arbitrate, if necessary. In either case, the agreement will be submitted to the Commission for approval. There is no basis whatsoever to summarily dismiss the General Statement unless and until underlying tariffs precisely matching all of the rates, terms, and conditions described in the General Statement are separately approved. Indeed, such an outcome would be totally at odds with the procompetitive model contemplated by both the 1996 Act and the MTA.

Movants also argue that Ameritech Michigan's General Statement fails to provide a commitment by Ameritech Michigan because it attempts to take into

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of traffic and not to other services, such as network elements, which constitute part of the physical facilities of a provider's network. Other services included in the General Statement, such as operator services and directory assistance, are clearly not interconnection services, and this Commission has previously endorsed continuation of the industry practice of contracts between providers. See, City Signal Order, Case No. U-10647, pp. 68-75.

account possible changes in the FCC rules as a result of litigation that is pending in the Eighth Circuit Court of Appeals. See Motion, pp. 5-6.[11] Movants contend that Ameritech Michigan must now commit to the terms that it will continue to offer, notwithstanding the outcome of judicial review of the FCC's regulations. Movants' position is nonsensical, and would cause Ameritech Michigan to violate its duty to negotiate in good faith. Indeed, refusing to include "a provision that permits the agreement to be amended in the future to take into account changes in Commission or state rules" (47 C.F.R. § 51.301(c)(3)) is a violation of the FCC's regulations.

Ameritech Michigan's General Statement must "comply with the requirements of section 251 and the regulations thereunder and the standards applicable under this section." Section 252(f)(1). Ameritech Michigan's General Statement complies with those statutory provisions and regulations. Specifically, the General Statement describes the currently applicable statutory and regulatory provisions. If those provisions, however, are changed by Congress, the FCC, this Commission, or court decree, Ameritech Michigan would be equally compelled to comply with the new regulations. For example, in oral argument before the Eighth Circuit Court of Appeals on October 3, the FCC, as well as AT&T, MCI, Sprint and other prospective new entrants, all recognized that "true ups" are appropriate. See Record of Proceedings, Iowa Utilities Bd. v. FCC, No. 96-3321,

[11]Ameritech is one of several parties seeking judicial review of certain aspects of the FCC's Local Competition Interconnection Regulations. See Iowa Utilities Board v. Federal Communications Comm'n, No. 96-3321 and consolidated cases (8th Cir.), pet'n for review of In the Matter of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order (Aug. 8, 1996). Notwithstanding the pendency of that petition for review and the limited stay order entered by the Eight Circuit, Ameritech Michigan is complying the FCC's regulations as adopted and will comply with any revised regulations that result from action taken by the appellate courts. Movants concede that, even with the stay in effect, "there is nothing to prevent a state commission from applying those [FCC] or like provisions on its own authority." Motion, p. 7 n.4.

Oct. 3, 1996, at 33-34, 36, 39-42.[12] On October 24, 1996, AT&T, CompTel, MCI and Sprint, in their Joint Application in the Supreme Court of the United States seeking to vacate the Eighth Circuit Stay, again admitted that arbitration agreements -- and presumably General Statements -- can be subject to revision based on future legal or regulatory changes: "All of those can be adjusted, prospectively and retroactively, if different rates are subsequently established."[13] Ameritech Michigan's General Statement merely recognizes that obvious result.

IV. AMERITECH MICHIGAN'S GENERAL STATEMENT IS CONSISTENT WITH STATE LAW

Movants contend that Ameritech Michigan's General Statement is inconsistent with the requirements of Michigan law and the regulations, orders and policies of this Commission. Movants are incorrect. The General Statement, and the process proposed for its approval, is consistent with state law.

First, Movants claim various procedural defects, including alleged lack of notice of intent to file and their claim that the application for approval should not be made in this docket. Ameritech Michigan has fully addressed these assertions in its October 29, 1996 response to a motion to reject the General Statement filed by the Michigan Cable Telecommunication Association (MCTA). Ameritech Michigan will not burden the record by repeating those responses here, except to

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[12]Mr. Wright, counsel for the FCC, argued (Tr. at 33-34) "it's quite clear that . . . there can be renegotiation clauses. There can be truing up clauses. The money that passes between the parties can be fixed." Mr. Carpenter, counsel for AT&T, MCI, Sprint and others, "absolutely agree[s] with everything that Mr. Wright said" (Tr. at 34); states that "there can be things in the state arbitration proceedings . . . that will . . . provide mechanisms for recouping losses if they occur (Tr. at 40); and that "the one thing the state is absolutely free to do in the course of these arbitrations . . . it can have the rates take affect subject to accounting obligations so people keep track of what the flow of money is and refund requirements" (Tr. at 41). (Emphasis added.)

[13]See Association for Local Telecommunications Services, et al. v. Iowa Utilities Board et al., Application to Circuit Justice Thomas, filed October 24, 1996, No. A 300, in the Supreme Court of the United States, p. 35; see id., pp. 34-39. See also Federal Communications Commission v. Iowa Utilities Board, Application to Vacate a Stay, filed October 24, 1996, No. A _, in the Supreme Court of the United States, pp. 34-38.

point out that the application for approval of the General Statement was made in this docket upon consultation with the Commission's Staff, as was specifically recommended in the Commission's August 28 Order establishing procedures herein.

The remainder of the state law issues addressed by Movants are, like the claimed deficiencies under the federal Act, objections which have been raised by Movants in arbitrations and will be resolved in this proceeding. There is no basis for summarily resolving these issues in Movants' favor based on this Motion.

V. MOVANTS' CONTENTION THAT AMERITECH MICHIGAN'S GENERAL STATEMENT IS WITHOUT PURPOSE AND RELEVANCE IS ERRONEOUS

Movants argue (Motion, pp. 17-21) that Ameritech's General Statement serves no purpose because, they contend, it cannot be used to support a so-called Track B application for interLATA authority under Section 271(c)(1)(B) of the 1996 Act. Movants reason that Track B is available to Ameritech only if it has received no requests for interconnection and that, because it has received requests, Track B is foreclosed. In a similar fashion, Staff argues that it appears that Ameritech is pursuing Track A, and that Ameritech cannot pursue Tracks A and B simultaneously. (See MPSC Staff Response, pp. 3-4) MCTA makes a similar claim. (MCTA Comments, pp. 4-5)

Applications for interLATA authority must be presented to the FCC under Section 271 of the Act, and it is solely a function of the FCC to determine whether a particular application properly satisfies the statutory prerequisites for consideration by that agency. In contending that Ameritech Michigan may not properly invoke Track B, Movants are prematurely presenting a question that can be resolved definitively only by the FCC. Indeed, their suggestion that this Commission deprive the FCC of information in the form of a General Statement

that it may deem relevant to the Section 271 application process -- in the face of a clear Congressional mandate that a BOC may generate that information at any time after passage of the Act -- is a transparent attempt to impede the FCC's ability to make a fully informed decision with respect to an application for interLATA authority.

A. A Section 252(f) General Statement May Support Either A Track A Or A Track B Application

The position advanced by Movants that a Section 252(f) General Statement can "only" be used to support a Track B Section 271 application is wrong as a matter of law. The statutory language, the legislative history and the policies underlying the Act support the view that Ameritech Michigan may satisfy the "competitive checklist" by relying upon a Section 252(f) General Statement whether Ameritech Michigan proceeds under Track A or Track B, whichever is appropriate at the time such application is filed with the FCC. Ameritech Michigan's position on this issue of the interpretation of a federal Act is the same as that of Ameritech Illinois, which is contained in the Answer to Question No. 12, in Ameritech Illinois' Legal Memorandum filed on September 27, 1996 in parallel proceedings before the Illinois Commerce Commission. (A copy of this answer is attached for the convenience of the Commission.)

B. Movants' Argument That Track B Has Been Foreclosed Is Premature And Erroneous

Movants also argue that a General Statement could not be used by Ameritech Michigan in support of a Track B application for interLATA relief because, they contend, Track B is not available where requests have been made for interconnection, and such requests have been made in Michigan. In the first instance, of course, this argument in premature: Ameritech Michigan has made

no application for interLATA authority -- whether under Track A or under Track B. Indeed, Ameritech Michigan could not even file a Track B application with the FCC before December 8, 1996. Therefore, the issue of the requirements for a Track B application is premature and not ripe for determination.

In addition to raising a premature issue, Movants seriously misread Section 271(c) when they contend that any request for interconnection from any competing provider necessarily derails or forecloses a Track B application. The statutory scheme is more focused than Movants' simplistic approach would indicate. If Movants were correct, then any request for interconnection, no matter how frivolous or lengthy in terms of implementation, would bar a Track B application for interLATA authority. Congress did not intend so bizarre and impractical a result.

Section 271(c)(1)(B), relating to Track B, provides:

> "A Bell operating company meets the requirements of this subparagraph if, after 10 months after the date of enactment of the Telecommunication Act of 1996 [i.e., September 8, 1996], no such provider has requested the access and interconnection described in subparagraph (A) before the date which is 3 months before the date the company makes its application under subsection (d)(1), and a statement of the terms and conditions that the company generally offers to provide such access and interconnection has been approved or permitted to take effect by the State commission under section 252(f). For purposes of this subparagraph, a Bell operating company shall be considered not to have received any request for access and interconnection if the State commission of such State certifies that the only provider or providers making such a request have (i) failed to negotiate in good faith as required by section 252, or (ii) violated the terms of an agreement approved under section 252 by the provider's failure to comply, within a reasonable period of time, with the implementation schedule contained in such agreement." (Emphasis added.)

In order to determine whether "no such provider has requested the access and interconnection described in subparagraph (A)," it is necessary to consider the definitions contained in Section 271(c)(1)(A).[14] That section states:

> "A Bell operating company meets the requirements of this subparagraph if it has entered into one or more binding agreements that have been approved under section 252 specifying the terms and conditions under which the Bell operating company is providing access and interconnection to its network facilities for the network facilities of one or more unaffiliated providers of telephone exchange service . . . to residential and business subscribers. . . . [S]uch telephone exchange service may be offered by such competing providers either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange service facilities in combination with the resale of the telecommunications service of another carrier."

(Emphasis added.) Thus, "such provider" in Section 271(c)(1)(B), whose "request" for interconnection prior to September 8, 1996 may foreclose a Track B application, is a provider that is (a) operational (to which the BOC "is providing" access and interconnection), (b) facilities-based; and (c) a provider to business and residential subscribers.[15]

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[14]The phrase "no such provider" in Section 271(c)(1)(B) refers back to the facilities-based provider described in Section 271(c)(1)(A). As Representative Tauzin stated:

> "If a competing provider of telephone exchange with some facilities which are not predominant has either requested access and interconnection or the RBOC is providing such competitor with access and interconnection -- the criteria in section [271(c)(1)(B) have] been met because no request has been received from an exclusively or predominantly facilities based competing provider of telephone exchange service. Subparagraph (B) uses the words 'such provider' to refer back to the exclusively or predominantly facilities based provider described in subparagraph (A)." 141 Cong. Rec., 104th Cong., 1st Sess. p. H 8458 (Aug. 4, 1995) ("Remarks of Rep. Tauzin").

[15]Congress made it clear that Track B could be available even if a facilities-based competitor had requested interconnection. Thus, Representative Tauzin stated:

> "If a competing provider of telephone exchange with exclusively or predominantly its own facilities, for example, [a] cable operator, requests access and interconnection, but either has an implementation schedule that albeit reasonable is very long or does not offer the competing service either because of bad faith or a violation of the implementation schedule[,] . . . the criteria [in Section 271(c)(1)(B)

In describing the purpose of Track B, the Conference Report states that Section 271(c)(1)(B)

> "is intended to ensure that a BOC is not effectively prevented from seeking entry into the interLATA services market simply because no facilities-based competitor that meets the criteria set out in new section 271(c)(1)(A) has sought to enter the market. The conference agreement stipulates that a BOC may seek entry under new section 271(c)(1)(B) at any time following 10 months after the date of enactment, provided no qualifying facilities-based competitor has requested access and interconnection under new section 251 by the date that is 3 months prior to the date that the BOC seeks interLATA authorization." (H.R. Rep. No. 104-458, 104th Cong., 2d Sess. 148 (1996) (Conference Report), emphasis added)

Although Ameritech Michigan believes that one or more of the carriers that made requests for interconnection prior to September 8, 1996 is an operational, facilities-based carrier providing service to business and residential customers within the meaning of Section 271(c), this issue need not be decided now. Rather, it is an issue that need only be decided by the FCC when Ameritech Michigan files a Section 271 application with that agency. In the meantime, Movants' Track B argument affords no basis whatever for the summary dismissal of Ameritech Michigan's General Statement.

IV. MOVANTS LACK AN APPROPRIATE INTEREST TO COMPLAINT ABOUT THE TERMS OF AMERITECH MICHIGAN'S GENERAL STATEMENT

It is pertinent to inquire about the interest or motivation of the three principal movants -- AT&T, MCI, and Sprint -- in requesting the summary dismissal of the proceedings seeking approval of Ameritech Michigan's General

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have] been met because the interconnection and access described in subparagraph (B) must be similar to the contemporaneous access and interconnection described in subparagraph (A) -- if it is not, [Track] (B) applies." Remarks of Rep. Tauzin, id. (emphasis added.)

Statement. None of the potential competitors of Ameritech Michigan in the long distance business has any interest in the specific terms of Ameritech Michigan's General Statement. The reason is that each of these carriers has chosen a different procedure and forum -- arbitration -- to resolve their disagreements with Ameritech Michigan and to produce an interconnection arrangement with it.

Because they have no interest in Ameritech Michigan's General Statement and have chosen arbitration instead, the motivation (if not at least the standing) of AT&T, MCI, and Sprint in attempting to effect the summary dismissal of Ameritech Michigan's General Statement is clearly suspect. Indeed, the obvious motivation of these potential competitors of Ameritech Michigan is to impede its ability to describe and document the terms and conditions that Ameritech Michigan generally offers "to comply with the requirements of Section 251 and the regulations thereunder and the standards applicable under [section 252(d)]." Section 252(f)(1). Their actions, they presumably assume, will thereby impede the efforts of Ameritech Michigan to enter the interLATA business in competition with them whether Ameritech Michigan seeks approval under Track A or Track B. But this is a wholly illegitimate anticompetitive reason to summarily reject Ameritech Michigan's General Statement. Accordingly, the Motion for Summary Disposition should be denied.

CONCLUSION

For all of the foregoing reasons, Ameritech Michigan respectfully requests the Commission to deny the relief requested by Movants and by the Staff. Ameritech Michigan further requests that the Commission adopt its recommendation, so that Ameritech Michigan's General Statement will be